

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES MICHAEL CUNNINGHAM,

Plaintiff,

v.

MEC ENTERPRISES, INC. and
RENEE SVETLICK,

Defendants.

Case No. 10-13409

Hon. Gerald E. Rosen

Magistrate Judge Michael Hluchaniuk

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION REGARDING DEFENDANT'S MOTION TO DISMISS**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on May 16, 2011

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

On April 20, 2011, Magistrate Judge Michael Hluchaniuk issued a Report and Recommendation ("R & R") recommending that the Court grant in part Defendant MEC Enterprises' motion to dismiss. Specifically, the R & R recommends that Defendant's motion be granted to the extent that it seeks the dismissal of certain of Plaintiff's claims for improper venue, and that the remainder of Defendant's motion be treated as seeking summary judgment and held in abeyance while the parties conduct limited discovery. In accordance with the R & R, the Magistrate Judge has entered orders (i) directing pursuant to Fed. R. Civ. P. 12(d) that the remainder of Defendant's motion — *i.e.*, the portion left

unresolved in the R & R — be treated as a motion for summary judgment governed by Fed. R. Civ. P. 56, and (ii) establishing a schedule for discovery on the limited issues pertinent to this pending summary judgment motion.

No objections have been filed to the R & R, and the time for doing so has passed. Accordingly, having reviewed the R & R, the parties' briefs in support of and opposition to Defendant's underlying motion, and the remainder of the record,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's April 20, 2011 Report and Recommendation is ADOPTED as the opinion of this Court. IT IS FURTHER ORDERED that, for the reasons stated in the R & R, Defendant MEC Enterprises' November 17, 2010 motion to dismiss (docket #11) is GRANTED IN PART, with Plaintiff's contract and tort claims relating to an alleged lease of real property in Tennessee being dismissed without prejudice for improper venue.

Next, IT IS FURTHER ORDERED, in accordance with the Magistrate Judge's R & R and subsequent orders, that the remaining portion of Defendant's motion to dismiss shall be treated as seeking summary judgment pursuant to Fed. R. Civ. P. 56, and that the parties shall conduct limited discovery as set forth in the Magistrate Judge's May 4, 2011 scheduling order. As indicated in this May 4 order, Defendant will be given an opportunity to file a renewed motion for summary judgment on or before September 6, 2011. In light of this procedure adopted by the Magistrate Judge, IT IS FURTHER ORDERED that the remainder of Defendant's November 17, 2010 motion to dismiss (docket #11) is DENIED WITHOUT PREJUDICE, with Defendant permitted to renew its

challenge to Plaintiff's remaining claims in accordance with the orders issued by the Magistrate Judge.

SO ORDERED.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: May 16, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 16, 2011, by electronic and/or ordinary mail.

s/Ruth A. Gunther
Case Manager